

This letter discusses the Telecommunications Excise Tax treatment of telecommunications associated with network connection services. See 86 Ill. Adm. Code Part 495. (This is a GIL).

July 26, 2001

Dear Xxxxx:

This letter is in response to your letter dated April 30, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

As a newly established business in the State of Illinois, we kindly request your advice as to the status of AAA in respect to the telecommunications excise tax regulations applicable to our electronic network operations.

From our review of the code, the forms and instructions, we believe that we would not be considered as engaging in the resale of telecommunications. Instead we believe that we fall into the category of a retail purchaser who would pay excise tax at purchase to the telecommunications provider and would not collect excise tax on its own sales.

As a basis for your opinion, we would like to offer the following background on the nature of aaa.'s business:

AAA was established by BBB, in April 2000 as a wholly-owned subsidiary incorporated in the State of Delaware. BBB, in turn, is the information technology subsidiary of CCC, the operator of the COUNTRY stock market as well as trading systems.

AAA serves as the principal organizational vehicle of CCC for installing, operating and maintaining electronic trading systems in the United States. Currently, AAA contributes primarily to servicing the \*\*\* and ##### markets with a focus on US-based members.

AAA maintains offices at two locations in CITY, Illinois, where as of April 2001 it employs approx. 20 own staff and a number of temporary secondees from the COUNTRY parent company.

With respect to telecommunications, AAA purchases data lines from US telecommunications providers in order to connect trader workstations at member financial institutions in Illinois and throughout the US with access points. Traders use these network connections to receive market data from the electronic exchange and to communicate orders to the central trading computer.

AAA manages the network connection process, supervises and monitors the network lines, maintains the trading software at the members front end and on the central back

end computers, provides helpdesk services, consults members on technical issues, and assists new members with on-site installations. The purchase of telecommunication services amounts to less than one third of AAA annual operating expenses. In our perspective, the telecommunications purchased by AAA become part of a complex value-added service. This service is sold as a package such that individual lines purchased can generally not be traced through to customer invoices.

At this stage, AAA earns revenue exclusively from its business relationship with the parent company, acting as a subcontractor under the major service agreements that BBB maintains with the ultimate beneficiaries of AAA services.

Given the above description of our current operations, we ask that you kindly confirm or correct our following understanding:

- 1) AAA pays telecommunications excise tax at time of purchase to the data network service provider.
- 2) AAA itself is not engaged in taxable telecommunications services and does neither collect telecommunications excise tax from its customers nor does it owe excise tax on its sales receipts.
- 3) AAA is not required to file regular telecommunications excise tax returns with the Illinois Department of Revenue.

We will continue to file regular zero-tax-due RT-2 returns while awaiting your response in order to maintain current filing status.

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. 35 ILCS 630/3. This tax must be collected from persons by "retailers maintaining a place of business in Illinois." 35 ILCS 630/5.

"Gross charges" means the amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by a retailer, valued in money whether paid in money or otherwise, including cash, credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of materials used, labor or service costs or any other expense whatsoever. "Gross charges" do not include charges for the storage of data or information for subsequent retrieval or the processing of data or information intended to charge its form or content. "Gross charges" also do not include charges for customer equipment, including such equipment that is leased or rented by the customer from any source, wherein such charges are disaggregated and separately identified from other charges in the books and records of the retailer. See 35 ILCS 630/2.

"Telecommunications," in addition to the meaning ordinarily and popularly ascribed to it, includes, without limitation, messages or information transmitted through use of local, toll and wide area telephone service; private line services; channel services; telegraph services; teletypewriter; computer exchange services; cellular mobile telecommunications service; specialized mobile radio; stationary two way radio; paging service; or any other form of mobile and portable one-way or two-way communications; or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber-optics, laser, microwave, radio, satellite or similar facilities. As used in the Act, "private line" means a dedicated non-traffic sensitive service for

a single customer, that entitles the customer to exclusive or priority use of a communications channel or group of channels, from one or more specified locations to one or more other specified locations. The definition of "telecommunications" does not include value added services in which computer processing applications are used to act on the form, content, code and protocol of the information for purposes other than transmission. "Telecommunications" does not include purchases of telecommunications by a telecommunications service provider for use as a component part of the service provided by him to the ultimate retail consumer who originates or terminates the taxable end-to-end communications. Carrier access charges, right of access charges, charges for use of inter-company facilities, and all telecommunications resold in the subsequent provision of, used as a component of, or integrated into end-to-end telecommunications service shall be non-taxable as sales for resale. See 35 ILCS 630/2(c).

As stated above, "gross charges" do not include "charges for the storage of data or information for subsequent retrieval or the processing of data or information intended to change its form or content." "Telecommunications" do not include "value added services in which computer processing applications are used to act on the form, content, code and protocol of the information for purposes other than transmission." See 35 ILCS 630/2(a) and 2(c). If telecommunications retailers provide both such services, the charges for each must be disaggregated and separately stated from telecommunications charges in the books and records of the retailers. If these charges are not thus disaggregated, the entire charge is taxable as a sale of telecommunications.

You have indicated that you purchase data lines from US telecommunications providers in order to connect trader workstations at member financial institutions. Traders use these network connections to receive market data from the electronic exchange and to communicate orders to the central trading computer. Based upon the limited information provided, it appears that you are selling telecommunications at retail and are subject to Telecommunications Excise Tax.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Martha P. Mote  
Associate Counsel

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